



February 20, 2015

HOUSE BILL No. 1371

DIGEST OF HB 1371 (Updated February 18, 2015 2:21 pm - DI 92)

Citations Affected: IC 32-20; IC 32-28; IC 36-1.

Synopsis: Public officials, liens, and restricted addresses. Provides that, for purposes of the law concerning common law liens, a public official is an individual who holds an office of the state or federal government or a political subdivision of the state or federal government in Indiana or formerly held an office at any time during the preceding four years. Creates a definition for "public employee". (Currently "public official" is defined as including a public employee). Amends the procedures that must be followed to record a common law lien against the real or personal property of a public official, a former public official, or a public employee. Prohibits a person from slandering the title to land by use of the law concerning common law liens. Provides that certain judicial officers, law enforcement officers, victims of domestic violence, and certain public officials who want to restrict access to their home addresses by means of a public property data base web site must submit a written request to the appropriate county, municipality, or township. Requires a county, municipality, or township that operates a public property data base web site to establish a process to prevent a member of the general public from gaining access to these home addresses by means of the public property data base web site. Makes conforming amendments.

Effective: July 1, 2015.

Richardson

January 14, 2015, read first time and referred to Committee on Government and Regulatory Reform.
February 19, 2015, amended, reported — Do Pass.

HB 1371—LS 6703/DI 69



February 20, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1371

A BILL FOR AN ACT to amend the Indiana Code concerning property and local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-20-5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. A person may not
3 use the privilege of:
4 (1) filing notices under this article; or
5 (2) **using the procedures under IC 32-28-13 concerning**
6 **common law liens;**
7 to slander the title to land.
8 SECTION 2. IC 32-28-13-1 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. As used in this
10 chapter, "common law lien" means a lien against real or personal
11 property that is not:
12 (1) a statutory lien;
13 (2) a security interest created by agreement; or
14 (3) **except as provided in this chapter,** a judicial lien obtained
15 by legal or equitable process or proceedings.

HB 1371—LS 6703/DI 69



SECTION 3. IC 32-28-13-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 1.5. As used in this chapter, "public employee" means an individual who is an employee in the executive, judicial, or legislative branch of the state or federal government or a political subdivision of the state or federal government in Indiana.**

SECTION 4. IC 32-28-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. As used in this chapter, "property owner" means the owner of record of real or personal property. ~~against which a common law lien is held under this chapter.~~

SECTION 5. IC 32-28-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. As used in this chapter, "public official" means an individual who:

(1) holds office; ~~in or~~

(2) ~~is an employee of~~ **formerly held office at any time during the preceding four (4) years;**

in the executive, judicial, or legislative branch of the state or federal government or a political subdivision of the state or federal government in Indiana.

SECTION 6. IC 32-28-13-4, AS AMENDED BY P.L.73-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) This chapter provides the procedure for filing and releasing a common law lien.

(b) This chapter does not create a common law lien. ~~A common law lien does not exist against the property of a public official for the performance or nonperformance of the public official's official duty.~~ A person asserting a common law lien must prove the existence of the lien:

(1) as prescribed by the common law of Indiana; **or**

(2) **as provided in this chapter.**

(c) Unless a common law lien becomes void at an earlier date under section 6(b) of this chapter, a common law lien is void if the common law lienholder fails to commence a suit on the common law lien within one hundred eighty (180) days after the date the common law lien is recorded under this chapter.

SECTION 7. IC 32-28-13-5, AS AMENDED BY P.L.73-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) A person who wishes to record a common law lien **against a person who is not a public official or public employee** must file with the county recorder of a county in which the



1 real or personal property against which the common law lien is to be
 2 held is located a statement of the person's intention to hold a common
 3 law lien against the real or personal property. The statement must be
 4 recorded not later than sixty (60) days after the date of the last service
 5 provided by the person who wishes to record the lien.

6 (b) A statement of intention to hold a common law lien must meet
 7 all of the following requirements:

8 (1) Except as provided in subsection (d), the person filing the
 9 statement must swear or affirm that the facts contained in the
 10 statement are true to the best of the person's knowledge.

11 (2) The statement must be filed in duplicate.

12 (3) The statement must set forth **all of the following:**

13 **(A) That the property owner is not a public official or**
 14 **public employee.**

15 ~~(A)~~ (B) The amount claimed to be owed by the property owner
 16 to the lienholder.

17 ~~(B)~~ (C) The name and address of the lienholder.

18 ~~(C)~~ (D) The name of the property owner.

19 ~~(D)~~ (E) The last address of the property owner as shown on the
 20 property tax records of the county.

21 ~~(E)~~ (F) The legal description and street and number, if any, of
 22 the real property against which the common law lien is filed.

23 ~~(F)~~ (G) A full description of the personal property against
 24 which the common law lien is filed, including the location of
 25 the personal property. ~~and~~

26 ~~(G)~~ (H) The legal basis upon which the person asserts the right
 27 to hold the common law lien.

28 (c) The recorder shall send by first class mail one (1) of the
 29 duplicate statements filed under subsection (b) to the property owner
 30 at the address listed in the statement within three (3) business days
 31 after the statement is recorded. The county recorder shall record the
 32 date the statement is mailed to the property owner under this
 33 subsection. The county recorder shall collect a fee of two dollars (\$2)
 34 from the lienholder for each statement that is mailed under this
 35 subsection.

36 (d) The statement of intention to hold a common law lien required
 37 under subsection (b) may be verified and filed on behalf of a client by
 38 an attorney registered with the clerk of the supreme court as an attorney
 39 in good standing under the requirements of the supreme court.

40 SECTION 8. IC 32-28-13-6 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) A property owner
 42 **who is not a public official or public employee** may send to the



lienholder a notice requiring the lienholder to commence suit on the common law lien. The notice to commence suit must be made by registered or certified mail to the lienholder at the address given in the lienholder's statement filed under section 5 of this chapter.

(b) If the lienholder fails to commence suit within thirty (30) days after receiving the notice to commence suit, the common law lien is void. To release the common law lien from the **real or personal** property, the property owner must comply with the requirements of section 7 of this chapter.

SECTION 9. IC 32-28-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 7. (a) If a lienholder fails to commence suit after notice to commence suit is sent under section 6 of this chapter, a property owner **who is not a public official or public employee** may file an affidavit of service of notice to commence suit with the recorder of the county in which the statement of intention to hold a common law lien was recorded. The affidavit must:

(1) include:

(A) the date the notice to commence suit was received by the lienholder;

(B) a statement that at least thirty (30) days have elapsed from the date the notice to commence suit was received by the lienholder;

(C) a statement that a suit for foreclosure of the common law lien has not been filed and is not pending;

(D) a statement that an unsatisfied judgment has not been rendered on the common law lien; and

(E) a cross-reference specifying the record of the county recorder containing the statement of intention to hold a common law lien; and

(2) have attached to it a copy of:

(A) the notice to commence suit that was sent to the lienholder under section 6 of this chapter; and

(B) the return receipt of the notice to commence suit.

(b) The **real or personal** property against which the lien has been filed is released from the common law lien when the county recorder:

(1) records the affidavit of service of notice to commence suit in the miscellaneous record book of the recorder's office; and

(2) certifies in the county recorder's records that the lien is released.

(c) The county recorder shall collect a fee for filing the affidavit of service of notice to commence suit under the fee schedule established



1 in IC 36-2-7-10.

2 SECTION 10. IC 32-28-13-7.5 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2015]: **Sec. 7.5. (a) A person who wishes to**
5 **record a common law lien against the real or personal property of**
6 **a public official or public employee must bring an action in a**
7 **circuit court or superior court that has jurisdiction in the county**
8 **in which the real or personal property is located.**

9 (b) An action brought under this section must be tried by the
10 court without a jury.

11 (c) A person who brings an action under this section must prove
12 by clear and convincing evidence that there is a legal basis for
13 recording the common law lien. To this end, a common law lien
14 does not exist against the real or personal property of a public
15 official or public employee for the performance or nonperformance
16 of the public official's or public employee's official duty.

17 (d) If the court finds that:

18 (1) there is a legal basis for recording a common law lien, the
19 court shall order the county recorder to record the common
20 law lien; or

21 (2) there is no legal basis for recording the common law lien,
22 the court shall dismiss the action.

23 (e) If a person who brings an action under this section fails to
24 maintain the action, the court may dismiss the action with
25 prejudice.

26 (f) A county recorder may not record a common law lien against
27 the real or personal property of a public official or public employee
28 unless the county recorder is ordered to do so under subsection
29 (d)(1).

30 (g) If a common law lien is improperly recorded against the real
31 or personal property of a public official or public employee, the
32 public official or public employee may request that a court:

33 (1) correct the title; and

34 (2) order the county recorder to show that the common law
35 lien was void from the date the lien was recorded.

36 (h) If:

37 (1) a common law lien is improperly recorded against the real
38 or personal property of a public official or public employee;

39 (2) an action brought under this section is dismissed with
40 prejudice; or

41 (3) a person who brings an action under this section does not
42 prevail in the action;



1 **a public official or public employee who is injured by the bringing**
 2 **or maintaining of the action may bring a civil action against the**
 3 **person who brought the action under this section for actual**
 4 **damages, costs, and reasonable attorney's fees incurred by the**
 5 **public official or public employee.**

6 SECTION 11. IC 32-28-13-8 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) When a common
 8 law lien recorded under this chapter has been satisfied, the lienholder
 9 shall record a certificate of satisfaction with the recorder of the county
 10 in which the statement of intention to hold a common law lien was
 11 recorded. The certificate must specify the record of the county recorder
 12 that contains:

13 (1) the statement of intention to hold a common law lien filed by
 14 the lienholder under section 5 of this chapter; **or**

15 (2) **the order of the court to record the common law lien**
 16 **issued under section 7.5(d)(1) of this chapter.**

17 (b) The certificate of satisfaction recorded under this section must
 18 discharge and release the property owner from the common law lien
 19 and bar all suits and actions on the lien.

20 (c) The recorder shall collect a fee for recording a certificate of
 21 satisfaction under this section in accordance with the fee schedule
 22 established in IC 36-2-7-10.

23 SECTION 12. IC 36-1-8.5-2, AS ADDED BY P.L.106-2013,
 24 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2015]: Sec. 2. As used in this chapter, "covered person"
 26 means:

27 (1) a judge;

28 (2) a law enforcement officer; **or**

29 (3) a victim of domestic violence; **or**

30 ~~who submits a written request to have the person's home address~~
 31 ~~restricted from disclosure under this chapter.~~

32 (4) **a public official.**

33 SECTION 13. IC 36-1-8.5-3, AS AMENDED BY P.L.14-2014,
 34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2015]: Sec. 3. As used in this chapter, "judge" means an
 36 individual who is ~~employed or was holds or~~ formerly **employed held**
 37 **office** as:

38 (1) a judge of the supreme court, court of appeals, tax court,
 39 circuit court, superior court, municipal court, county court, federal
 40 court, or small claims court; **or**

41 (2) **a magistrate, commissioner, or juvenile referee of a court.**

42 SECTION 14. IC 36-1-8.5-4.5 IS ADDED TO THE INDIANA



CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2015]: **Sec. 4.5. As used in this chapter, "public official" means an individual who holds or formerly held office at any time during the preceding four (4) years in the executive or legislative branch of the state or federal government or a political subdivision of the state or federal government.**

SECTION 15. IC 36-1-8.5-7, AS ADDED BY P.L.106-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 7. (a) A covered person who wants to restrict access to the covered person's home address by means of a public property data base web site must submit a written request to the unit that operates the public property data base web site.**

(b) A unit that operates a public property data base web site, directly or through a third party, ~~may~~ shall establish a process to prevent a member of the general public from gaining access to the home address of a covered person by means of the public property data base web site.

(b) (c) In establishing a process established by a unit under subsection (a); must meet the requirements of this chapter. under subsection (b), a unit shall do all of the following:

(1) Determine the forms of the written request to restrict and allow public access.

(2) Specify any information or verification required by the unit to process the written request.

(3) Determine which person or department of the unit will receive and process the request.

(4) Provide a method in which a covered person is notified of the procedure to be used to restrict or allow disclosure of the home address of the covered person under this chapter.

(d) A unit may charge a covered person a reasonable fee to make a written request under this section.

SECTION 16. IC 36-1-8.5-8 IS REPEALED [EFFECTIVE JULY 1, 2015]. **Sec. 8: A covered person who wants to restrict access to the covered person's home address by means of the public property data base web site must submit a written request to the unit. As part of the process developed by the unit under section 7 of this chapter, the unit may:**

(1) determine the form of the written request;

(2) specify any information or verification required by the unit to process the request; and

(3) charge a covered person a reasonable fee to make a written request under this section.

SECTION 17. IC 36-1-8.5-9, AS ADDED BY P.L.106-2013,



SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) This section applies to a covered person who has submitted a written request under section 8 7(a) of this chapter.

(b) A unit shall restrict access to the home address of a covered person until the covered person submits a written request to the unit to allow public access to the person's home address on the public property data base web site. ~~As part of the process developed by the unit under section 7 of this chapter, the unit may:~~

- ~~(1) determine the form of the written request;~~
- ~~(2) specify any information or verification required by the unit to process the request; and~~
- ~~(3) charge a covered person a reasonable fee to make a written request under this section.~~

SECTION 18. IC 36-1-8.5-10, AS ADDED BY P.L.106-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) This section applies to a covered person who:

- (1) after submitting a written request under section 8 7(a) of this chapter, obtains a change of name under IC 34-28-2; and
- (2) notifies the unit in writing of the name change.

(b) The unit shall prevent a search by the general public of the public property data base web site from disclosing or otherwise associating the covered person's home address with the covered person's former name and new name. The unit may charge a reasonable fee to process a name change under this section.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1371, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, after line 15, begin a new paragraph and insert:

"SECTION 3. IC 32-28-13-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 1.5. As used in this chapter, "public employee" means an individual who is an employee in the executive, judicial, or legislative branch of the state or federal government or a political subdivision of the state or federal government in Indiana.**"

Page 2, delete lines 6 through 13, begin a new paragraph and insert:

"SECTION 5. IC 32-28-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 3. As used in this chapter, "public official" means an individual who:**

(1) holds office; ~~in~~ or

(2) is an employee of formerly held office at any time during the preceding four (4) years;

in the executive, judicial, or legislative branch of the state or federal government or a political subdivision of the state or federal government in Indiana."

Page 2, line 33, after "official" insert "**or public employee**".

Page 3, line 5, delete "." and insert "**or public employee.**".

Page 3, line 33, after "official" insert "**or public employee**".

Page 4, line 4, after "official" insert "**or public employee**".

Page 4, line 38, after "official" insert "**or public employee**".

Page 5, line 5, after "official" insert "**or public employee**".

Page 5, line 6, after "official's" insert "**or public employee's**".

Page 5, line 17, after "official" insert "**or public employee**".

Page 5, line 20, delete "," and insert "**or public employee,**".

Page 5, line 20, after "the public official" insert "**or public employee**".

Page 5, line 27, delete ";" and insert "**or public employee;**".

Page 5, line 32, after "official" insert "**or public employee**".



Page 5, line 35, delete "." and insert "**or public employee.**".

Page 6, line 34, after "office" insert "**at any time during the preceding four (4) years**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1371 as introduced.)

MAHAN

Committee Vote: yeas 10, nays 0.

